

① Supreme Court, U.S.  
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IN THE

Supreme Court of the United States

BJY, Inc. and Gregg W. Young,

*Petitioners,*

*-versus-*

MAMDOUH EL-HAKEM,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

Petition for Writ of Certiorari

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## **Question Presented for Review**

Respondent, Mandouh El-Hakin asserted a race discrimination claim under 42 U.S.C. § 1981 against his employer, BJV, Inc. and its CEO Gregg W. Young for referring to him as "Manny" in weekly phone conversations and e-mails occurring over a period of two months. Respondent testified that he objected to the use of this "nick name" was contrary to his wishes religion and heritage.

### **Issue 1**

Does the utilization of a racially neutral nickname "Manny" for the name "Mandouh" constitute race discrimination and violate 42 U.S.C. § 1981?

### **Issue 2**

Does an employer's use of a nickname over the religious objections of its employee create a racially hostile work environment resulting in civil liability under 42 U.S.C. § 1981?

### **List of Parties to the Proceeding**

The following is a list of all parties to the proceeding in the court whose judgment is sought to be reviewed, and a list of parent companies and nonwholly owned subsidiaries as required by Rule 29.6.

**Gregg W. Young**

**BJY, Inc.** BJV, Inc. has no parent company and no publically held company holds 10% or more of the corporation's stock.

**Mamdouh El- Hakim**

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<b>41 U.S.C. § 1981a</b>	<b>passim</b>
<b><u>Faragher v. City of Boca Raton</u>, 524 U.S. 775, 788, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998)</b>	<b>9</b>
<b><u>Harris v. Forklift System, Inc.</u>, 510 U.S. 17 (1993)</b>	<b>11</b>
<b><u>Hrobowski v. Worthington Steel Co.</u> <u>&amp; Worthington Industries Inc.</u>, 358F.3d 473 (7th Cir. 2004).</b>	<b>10</b>

## **Citations of Official and Unofficial Reports of the Opinions and Orders**

The opinion of the 9<sup>th</sup> Circuit and is published El-Hakem v. BZY Inc. et al., Nos. 03-35514, 03-35544 and 03-35063, 2005 WL 1692470 (9th Cir. July 21, 2005)

The opinion of the district court is published.

### **Statement of the Basis for Jurisdiction**

The judgment of the Court of Appeals was filed July 21, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

### **Statutory Provision Involved**

This case involves 41 U.S.C. Section 1981a which provides:

#### **Statement of equal rights**

(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

### Statement of the Case

This is an appeal of a judgment involving a claim that appellant BJV and its chief executive officer, Mr. Young, created a racially hostile work environment by referring to plaintiff by the nickname "Manny" instead of his given name "Mamdouh."

Mamdouh El-Hakem was born and raised in Egypt. (Reporters Record at p. 95). He was educated as an engineer. (Id). He is a Muslim practicing Islam. (Reporters Record at p. 96). He later obtained Canadian citizenship and came to the United States to work under the provision of NAFTA under a TN VISA. (Reporters Record at p. 107). In September of 1998, He went to work for Appellant, BJV as a structural plan examiner. (Reporter's Record at p. 109). In May of 1999, El Hakem began to work for Appellant, BJV, Inc. ("BJV"). (Reporter's Record at p. 388).

BJV's CEO was Gregg Young. Mr. Young officed in Austin, Texas. (Reporter's Record at 643). There were no face to face meetings between Mr. Young and Mamdouh El-Hakem. Phone and e-mail contact was infrequent. (Reporter's record p. 146). The focus of Mr. El-Hakem's complaint was the alleged suggestion by Mr. Young that Mr. El-Hakem go by the nickname "Manny" described as a more "Western Name" or a name easier for BJV clients to pronounce. Mr. El-Hakem apparently was offended because he was advised by his

friend, Wadj Said the name was Jewish, and that conclusion gave rise to bad feelings.

He did tell me that his boss had given him a Manny name, and I smiled and I told him, "There is a great Jewish rabbi in town. His name is Emanuel Rose, and his nickname is Manny."

Q. Did Mr. El-Hakem express any concern about the name Manny specifically?

A. Yes. I mean, you know, he started to know that this is, you know, a name that he doesn't accept, is not appropriate. We have to remember that he came from an Egyptian society. There was a conflict at one time between Egypt and Israel. There was a conflict, you know, a major conflict, that both sides have lost a lot of innocents and civilians.

(Testimony of Waja Said Reporters Record at p. 7). Mr. El Hakem did not communicate to Mr. Young or anyone at BJJ that he was offended because he perceived the name to be Jewish. He did testify he objected on religious grounds, but Mr. Young continued to refer to Mr. El Hakem as "Manny" despite this objection. Mr. El Hakem's claim of a hostile race environment was grounded solely in these phone and e-mail discussions as to the use of a nickname "Manny." As the issue on appeal is whether "a hostile race environment" existed, Mr. El Hakem's description of these discussion of the conversation follows.

Mr. El Hakem described the first discussion with Mr. Young as follows:

A. During this conference [phone] call, for the first time I heard Mr. Young calling me Manny, and was -- was a different way of pronunciation. And the way he pronounce it, it's really, I felt -- I shocked. I didn't expect to hear this name, and even the way he -- he said it. So I object and I corrected him and I said, "My name is Mamdouh, and it's pronounced Mamdouh, and I want you to call me Mamdouh. My name means things to me. It is part of my entity. It is part of my personality. It is my name. I carry it for 44 years. And it's part of my religion, and I need to be used and called by the name Mamdouh, which is the name I'm given by my parents."

(Reporter's Record 137-38). The second phone conversation that Mr. El Hakem had with Mr. Young, involved Mr. El Hakem's promotion to office manager, was described by Mr. El Hakem as follows:

Q. Okay. After the Monday marketing meeting, did you have a second conversation with Mr. Young?

A. Yes, I did.

Q. And was that in another marketing meeting or just individually on the telephone?

A. I got an individual telephone call from Mr. Young directly, and he start talking to me about that "You are getting an opportunity to be a manager of one of the offices and manage

this office. And to be successful and for the client to accept you, it's better to use a Western nickname." And he return and suggest to use Manny, and I object this, and we have another discussion about it.

Q. Now, Mr. El-Hakem, as I understand your testimony, the telephone conversation with Mr. Young dealt with the Western name that he was proposing for you, correct?

A. Yes.

Q. And you responded by explaining again that it was contrary to your wishes, religion, and heritage; is that right?

A. Yes.

Q. Is that where the telephone conversation ended?

A. Yes.

(Reporters Record 142). Mr. El Hakem testified the next communication between Mr. El Hakem and Mr. Young was by Email.

Q. And did you get a further reply in a chain of e-mails?

A. Yes. I got a reply for the same e-mail, from Mr. Young. He keep on pushing me to accept a Western name, but I object. I replied, objecting this and suggesting in this stage to use my last name, which is Hakem, as -- as a name, dealing with the clients.

Q. Okay. And so did you get a reply to that suggestion from Mr. Young?

A. Mr. Young replied to me, proposing using Hank as a Western name, Western nickname, and I object that.

Q. What did you do after you received the e-mail suggesting Hank?

A. I went to the dictionary and I open the dictionary. I looked for the meaning of Hank, and I found Hank. It doesn't mean anything. It's just a word.

(Reporters Record 144-45). After the e-mail, the contact between Mr. Young and Mr. El Hakem did not communicate directly.

Q. Okay. Did you talk on the telephone with Mr. Young after that concerning the use of anything other than your name, Mamdouh?

A. I -- after that, I notice that Mr. Young start not communicating to me and start back -- and start putting Mr. Skip Nelson as a contact person in front of me.

(Reporters Record at p. 146). In summary, Mr. El Hakem testified that he "heard the name Manny" during the Monday phone conference marketing meetings for about two months.

Q. Now, can you give me some estimate of how often you heard the name Manny referred to you while you were employed there from May

1999 onward?

A. Shortly after Mr. Stember left the company, because I have to attend this Monday marketing meeting, at least I hear it once during this Monday marketing meeting, at least when Mr. Young calling me, "What about Portland, Manny?" He want me to talk about the work here. So it's at least once a week during this Monday marketing meeting, plus maybe if it comes through the e-mails. But as a contact -- as a direct contact, that's once a week for around two months.

(Reporters Record at p. 157).

As a structural plans examiner in Oregon, Mr. El Hakem knew he need to be licensed. (Reporters Record at p. 114). While working for BJV, Mr. El Hakem sat for and failed the examination to become licensed as a structural plans examiner. (Reporters Record at p. 258-59). Within two weeks of failing the Exam, Mr. El Hakem was terminated, and the BJV Portland office was closed. (Reporters Record at p. 419-20). The discrimination complaints and this lawsuit followed.

The jury determined Young created a racially hostile work environment, and awarded \$15,000 in actual damages and \$15,000 in exemplary damages. The jury determined that BJV did not create a racially hostile work environment. Upon post-trial motion, the court disregarded the jury's finding that BJV did not create a racially hostile work environment and entered an amended judgment holding BJV